Brief in Opp. at 14. However, as demonstrated above, the lower courts are split over the application of *Younger* abstention to litigants whose state administrative proceedings have become final and whose avenues for appeal in the state court system have expired. This Court has never squarely confronted that question. *See New Orleans Public Service, Inc. v. Council of the City of New Orleans ("NOPSI")*, 491 U.S. 350, 369 n.4 (1989). However, at the time of this Court's decision in *NOPSI*, the Fifth Circuit had decided *Concerned Citizens of Vicksburg v. Sills*, 567 F.2d 646 (5th Cir. 1978), and *Thomas v. Texas State Board of Medical Examiners*, 807 F.2d 453 (5th Cir. 1987).

There is a "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 817 (1976). This obligation, coupled with this Court's acknowledgment that "the relevant principles of equity, comity, and federalism have little force in the absence of a state proceeding," *Huffman v. Pursue*, 420 U.S. 592, 602-03 (1975) (quoting *Steffel v. Thompson*, 415 U.S. 452, 462 (1974)), counsel for acceptance of the Petition and reversal of the Fourth Circuit. This Court stated very clearly, "When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction ... **The right of a party plaintiff to choose a Federal court where there is a choice cannot properly be denied.**" *NOPSI*, 491 U.S. at 358-59 (emphasis added). Abstention should only be exercised in a very clear category of cases outlined by the Court and abstention remains "the exception and not the rule." *Id.* (quoting *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 236 (1984)). This Court has stated:

> When no state criminal proceeding is pending at the time the federal complaint is filed, federal

> intervention does not result in duplicative legal proceedings or disruption of the state criminal justice system; nor can federal intervention, in that circumstance, be interpreted as reflecting negatively upon the state courts' ability to enforce constitutional principles.

Huffman, 420 U.S. at 603 (quoting *Steffel*, 415 U.S. at 462). This rule is true even when the federal court may have some affect on a state proceeding in terms of disagreeing with the result reached.

> It is true, of course, that the federal court's disposition of such a case may well affect, or for practical purpose preempt, a future - or, as in the present circumstances, even a pending - state court action. But **there is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts.**

NOPSI, 491 U.S. at 373 (emphasis added). In *Younger*, the concerns were federalism and comity and preventing a federal court from interfering with an ongoing, pending state proceeding. In *NOPSI*, this Court treated the state trial and appeals process as a "unitary system" that could not be interrupted. *NOPSI*, 491 U.S. at 369. Respondents in *NOPSI* argued that the state process from the beginning of the administrative process to the end of all state court appeals should be viewed as a unitary system. *Id.* This Court did not decide that question because it did not need to in that case. However, this case presents that question for decision. In this case, the state proceedings were administrative and summary in nature, and were final and complete at the time of filing the federal lawsuit. As this Court stated in both Huffman and *NOPSI*, Younger's concerns about federalism and comity simply are not present when the state administrative

proceedings have finalized and no state court proceedings have begun. The concerns illustrated in *Younger* of respecting state courts and the ability of state appeals courts to oversee the trial courts are simply not present in this case. The Fourth Circuit's decision was in error. This Court should grant the Petition to correct this error in the important circumstance of federal jurisdiction.

CONCLUSION

For the foregoing reasons, and for the reasons specified in the Petition, Petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari.

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